

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of)	
)	
Digital Broadcast Content Protection)	MB Docket No. 02-230
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**Consumer Electronics Retailers Coalition
Comments On Further Notice Of Proposed Rulemaking**

February 13, 2004

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The Consumer Electronics Retailers Coalition (“CERC”) is a nonprofit public policy corporation representing the concerns of specialist and general retailers of consumer electronics and information technology products.¹ CERC has not previously submitted comments in this Docket. However, two issues have arisen in this FNPRM² that strike at the core competitive entry concerns of consumer electronics retailers, and their ability to deal with their own customers in good faith.

I. CERC OPPOSES ANY CHANGE TO THE FCC REGULATION PROHIBITING SCRAMBLING OR ENCRYPTION OF THE CABLE BASIC SERVICE TIER.

The Commission asks whether its longstanding rule against scrambling or encryption of the cable basic service tier should be abolished. As a possible justification, it cites the NCTA discussion, in Reply Comments, of possibly using encryption that is applied at the cable headend as a “robust method” for internal home network purposes: “Marked Content -- that is, broadcast programming marked to restrict against Internet redistribution -- could be output using ‘robust methods.’³ This meant that a cable operator, for example, could use various forms of encryption, conditional access, and other security tools to carry Marked Content from one set-top box (for

¹ For a fuller statement of CERC’s mission and a list of CERC’s members, *see* www.ceretailers.org.

² *In the Matter of Digital Broadcast Content Protection*, MB Docket No. 02-230, FCC 03-273, Report and Order and Further Notice of Proposed Rulemaking (Rel. Nov. 4, 2003) (“Broadcast Flag Order”).

³ *Id.* ¶ 59; *In the Matter of Digital Broadcast Content Protection*, MB Docket No. 02-230, NCTA Comments at 5-7 (Feb. 20, 2003).

example, in the living room) to another (for example, in the bedroom), so long as the home network itself used secure interfaces between set-top boxes, so that Marked Content would not leak onto the Internet.”

CERC would strongly oppose any use of headend encryption for such a purpose, and does strongly oppose any relaxation of FCC regulations in order to enable it. The entire purpose of Section 304 of the 1996 Telecommunications Act (now Section 629 of the Communications Act)⁴ and Section 624 of the Communications Act⁵ was to enable, not foreclose, competitive entry. Use of headend-sourced encryption to secure home networks would lock out legacy products and would require use of a CableCARD (POD) in products that otherwise would not need one. In addition to potentially imposing unnecessary costs on consumers,⁶ such a scheme would appear to lock out DBS providers’ products, as well as products that may be appropriate for home network use in some capacity but would not meet all DFAST requirements for obtaining a POD. It would also, by requiring use of a CableCARD, subject manufacturers – including smaller manufacturers of inexpensive, ancillary devices – to the expense of becoming licensed under DFAST, buying certificates, and undergoing testing – all to meet a “robustness” regime unilaterally defined by a local cable operator.

As retailers who were shut out of the market for lawful, secure cable devices until the legislative and regulatory initiatives that resulted in the compatibility⁷ and the navigation device proceedings,⁸ CERC members have participated at every step of the legislative and regulatory public policy debates. The NCTA proposal, if understood correctly, would stand the intention of these proceedings – to *limit* the required design use of local, MSO-initiated encryption, so as to support competitive entry – on its head. It would retard the market for competitive multipurpose

⁴ 47 U.S.C. § 549, *Cable Television Consumer Protection and Competition Act of 1992*, Pub. L. No. 102-385, 102 Stat. 1460 (1992); *Telecommunications Act of 1996*, Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁵ 47 U.S.C. § 549(b).

⁶ CERC’s position is that the cost of a CableCARD is a network rather than device expense, as its purpose is to delineate MSO access functions from home device functions. In addition to twisting the original purpose of the “POD” or “CableCARD,” the NCTA plan would subject consumers to additional expense one way or the other – as service ratepayers or as device renters.

⁷ See *In the Matter of Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992, Compatibility Between Cable Systems and Consumer Electronics Equipment*, ET Docket No. 93-7.

⁸ *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, CS Docket No. 97-80, *Compatibility Between Cable Systems and Consumer Electronics Equipment*, PP Docket No. 00-67.

devices just as this market is on the verge of being opened. The FCC should not change its regulations to enable such a step, and it should interpret its regulations so as to foreclose it.

II. CERC WOULD OPPOSE ANY FCC REGULATION PROVIDING FOR THE “REVOCATION” OR “RETIREMENT” OF PRODUCTS, INTERFACES, OR TECHNOLOGIES ON A PRODUCT OR MODEL BASIS, OR THAT OTHERWISE HARMS THE USE OF PRODUCTS CONSUMERS ALREADY OWN.

CERC believes it to be vital that products or interfaces that were in good faith purchased and relied upon by consumers must not have their functionality or usefulness diminished by official action taken or countenanced by the FCC. Essentially the same question was posed in the “Plug & Play” proceeding and is addressed by CERC in its Comments filed there today.⁹ CERC hereby incorporates by reference its answer in those Comments: that it opposes any such revocation or retirement to the extent it may have an impact on good faith use by consumers of products they have purchased, or on the home networks in which these products are used.

III. ON OTHER “FLAG” – RELATED MATTERS CERC ENDORSES THE POSITIONS TAKEN BY THE CONSUMER ELECTRONICS ASSOCIATION.

As to other questions posed by the Commission, so as not to burden the record, CERC finds it sufficient to support and endorses the Comments filed today in this Docket by the Consumer Electronics Association.¹⁰

IV. CONCLUSION – THE COMMISSION MUST KEEP CONSUMER WELFARE AND COMPETITIVE ENTRY CONSIDERATIONS IN MIND.

CERC applauds the Commission for recognizing the consumer welfare and competitive issues raised in this proceeding. As retailers who are on the front lines of buying DTV and HDTV products from manufacturers and marketing and explaining them to consumers, CERC members have vital interests in both competition and fair treatment of consumers. The Commission should assign its highest priority to these values.

⁹ *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, CS Docket No. 97-80, *Compatibility Between Cable Systems and Consumer Electronics Equipment*, PP Docket No. 00-67, CERC Comments (Feb. 13, 2004).

¹⁰ *In the Matter of Digital Broadcast Content Protection*, MB Docket No. 02-230, Consumer Electronics Association Comments (Feb. 13, 2004).

Respectfully submitted,

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